

## STORMWATER UTILITY ACT

**House Bill 4691 as introduced**  
**Sponsor: Rep. Michael Webber**  
**Committee: Regulatory Reform**  
**Complete to 10-28-19**

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Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4691 would create a new act, the “Stormwater Utility Act,” which would allow *local units of government* to create *stormwater management* utilities to create and manage *stormwater systems*.

*Local unit of government* would mean a city, village, township, or county.

*Stormwater management* would mean one or more of the following:

- The quantitative regulation through the stormwater system of the volume and rate of stormwater runoff from property, including flood control.
- The quantitative regulation of stormwater runoff into the stormwater system or stormwater discharged from the stormwater system, including stormwater treatment, pollution prevention activities, and administration and enforcement of ordinances to reduce, eliminate, or treat pollutants carried by stormwater into the stormwater system.
- Notifying property owners about the stormwater management program, including how to reduce or eliminate fees for use of the stormwater system.

*Stormwater system* would mean features that are located in whole or in part within the geographic limits of a system service area and that are owned, operated, designed, maintained, or used by a local unit of government for collecting, storing, treating, conveying, or attenuating stormwater, such as roads, curbs, gutters, storm drains, ditches, pipes, floodwalls, pumping stations, and other similar features.

### **Stormwater Management Utility**

A stormwater management utility established after the new act took effect would have to accomplish one or more of the following regulatory purposes:

- A. Protect against economic loss, property damage, threats to public health and safety, and damage to the environment and natural resources from water pollution or from flooding or other instances of high volumes or rates of stormwater runoff.
- B. Enable property owners to fulfill legal obligations pertaining to the increased quantity or reduced quality of stormwater runoff resulting from property development, such as obligations under section 3109 of the Natural Resources and Environmental Protection Act (NREPA), the natural flow doctrine, and the law of trespass and nuisance.
- C. Provide property owners paying stormwater utility fees with proportionate benefits to the services described in point A, including reciprocal benefits to a property owner when other property owners pay fees to support the stormwater system and thereby fulfill their legal obligations to that property owner as described in point B.

### **Stormwater Management Plan**

To create a stormwater management utility, the legislative body of a local unit of government would have to adopt by resolution a stormwater management plan, then adopt a stormwater utility ordinance consistent with that plan. A stormwater management plan would have to include all of the following:

- The time period covered by the plan.
- The service area of the stormwater management utility, consisting of all or a portion of one local unit of government or of multiple local units that jointly developed a plan.
- The type and level of stormwater management services provided by the stormwater management utility, including system reliability, level of flood protection, pollution control, and structural condition of system components.
- The projected direct and indirect costs to provide the services described above, including the cost of planning, capital, operations, maintenance, permit compliance, and asset replacement.
- Recommendations for efficiencies to minimize costs.
- Current and projected impervious area and, if applicable, an inventory of impervious surfaces and parcel areas for properties within the utility's service area.
- A determination of which properties would be subject to any stormwater utility fee for voluntary use of the stormwater system and the method used to make the determination.
- The method of calculating any stormwater utility fees proportionate to the cost of providing the locally determined level of service of stormwater management.
- Provisions to ensure that the cost of the program related to the amount of stormwater managed would be allocated in proportion to the amount of stormwater runoff from any property conveyed by the stormwater system.
- A description of the components of the stormwater system.
- A description of how a stormwater utility fee could be reduced or eliminated.

### **Stormwater Management Plan Notice and Public Hearing**

Before preparing a stormwater management plan, a local unit of government would have to give notice of its intent to do so by all of the following means:

- By posting on its website, if it had one that was freely accessible to the public.
- By publishing in a newspaper of general circulation in the local unit or, if none, providing notice by first-class mail to all people assessed real property taxes and the occupants of all structures within the local unit.
- By first-class mail to the county drain commissioner or water resources commissioner and to each local unit located in or adjacent to the unit preparing the plan.

A local unit of government would have to hold at least one public hearing on the proposed plan before its adoption, giving notice of the hearing as provided in the bill. A stormwater management plan could be extended or otherwise amended by resolution using the same process and procedures used to adopt the original plan.

### **Stormwater Utility Ordinance**

A stormwater utility ordinance would have to identify the regulatory purpose it served. An ordinance could provide for a stormwater utility fee on property serviced by a stormwater system to pay the costs of the stormwater management program. The fee would have to be proportionate to the direct and indirect costs to the local unit of providing stormwater management to each property that was not financed by revenue received from another source.

The ordinance would have to lay out the methods used to determine the fee. A fee could not include any components other than those outlined in the act. The ordinance could define rate categories for classes of property for which the proportionate service cost was similar.

### **Stormwater Utility Fee**

A stormwater management utility could assess a one-time stormwater utility fee for connection to the stormwater system of newly developed or modified property, based on the property's share of the cost to expand the system to manage its additional stormwater. A stormwater management utility could also assess a stormwater utility fee for the use of a stormwater system, based on the quantity and/or quality of stormwater runoff from each property or category of property. The fee would have to be calculated using one or more methods generally accepted either by licensed professional engineers or by regional or national professional groups associated with stormwater experts, examples of which are provided by the bill.

A stormwater utility ordinance would have to establish remedies for any unpaid stormwater utility fees. The local unit could collect delinquent stormwater utility fees by any method authorized by law. A partial payment of delinquent stormwater utility fees would have to be applied to the oldest delinquent fees, and remaining fees could continue to accrue interest and penalties.

### **Reduction/Elimination of Fees**

A stormwater ordinance that imposed a stormwater utility fee would have to provide property owners with a way to reduce or eliminate their fees, specifically by modifying or improving their property in a way that reduced or eliminated their runoff or pollutant loadings in excess of the natural levels of stormwater entering the stormwater system. Each property owner would have the burden of demonstrating that the fee reduction or elimination was justified, using methods that were reasonably accurate considering available technology. A reduction or elimination of the stormwater utility fee would have to be proportionate to the reduction of the costs of service of the stormwater system to the property.

In addition, to ensure that stormwater utility fees were voluntary, property would not be subject to the fee unless the local unit demonstrated both of the following:

- That the property utilized the stormwater system.
- That such utilization imposed a net cost to the stormwater system when offset by any conditions that reduced the cost of service to the stormwater system or were reasonably related to a benefit to the system provided by that property, such as modifications or improvements made to reduce or eliminate the owner's stormwater utility fee.

The local unit would have to provide property owners with the opportunity to demonstrate that their property did not utilize the stormwater system to the extent calculated by the local unit in establishing the fee, if at all, and that their fees were thus entitled to be reduced or eliminated.

### **Stormwater Fund**

A stormwater utility ordinance establishing a stormwater utility fee would have to establish a stormwater fund. All stormwater utility fees collected by the local unit of government would be deposited into the fund. The treasurer of the local unit could receive money or other assets from any other source for deposit into the fund. This money would be invested pursuant to 1943 PA 20. The treasurer would credit interest and earnings from fund investment to the fund, and any money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund of the local unit. The treasurer would have to expend money from the fund,

upon appropriation, only for the regulatory purpose of defraying any of the following stormwater management program costs:

- The operation, maintenance, planning, engineering, acquisition, construction, installation, improvement, or enlargement of a stormwater system, including financing and debt service costs and indirect and overhead costs that were fairly chargeable to those activities under applicable generally accepted accounting principles and the Uniform Budgeting and Accounting Act.
- The administration of the stormwater management program.
- The development of a stormwater management plan.
- Providing user education related to the stormwater management plan or required by federal or state regulations or permits.

If the local unit had a freely accessible public website, it would have to post on it the most recent audit report for the fund under the Uniform Budgeting and Accounting Act.

#### **Stormwater Management Utility Administration**

A stormwater utility ordinance would have to designate an entity within the local unit of government to administer the stormwater management utility and establish its administrative duties. The administrative policies and procedures established by the ordinance or the administrator would have to include at least the following topics, as applicable:

- Criteria used to determine whether a stormwater utility fee would be billed to the property owner.
- Procedures for updating billing data based on changes in property boundaries, ownership, and stormwater runoff characteristics and calculation methods.
- Billing and payment procedures of the stormwater management utility, including the billing period, billing methodology, credit application procedures, and penalties.
- Policies establishing the type and manner of service to be provided by the utility.
- Procedures for granting and modifying the reduction or elimination of a fee.
- Procedures for appealing stormwater utility fees.
- Enforcement policies and procedures.
- A process by which fees, formulas for calculating fees, and formulas for calculating fee reductions would be reviewed and updated at least every three years.

#### **Stormwater Utility Appeals Board**

An ordinance or the policies and procedures adopted under it would have to provide a procedure for appeals, the establishment of an appeals board, and the reduction or elimination of a stormwater utility fee. The procedure would have to include at least all of the following:

- A property owner liable for a stormwater utility fee could appeal the determination of the fee or the amount of the fee, including a determination on a reduction in or the elimination of the fee. An appeal could be based on the quantity or quality of the stormwater runoff generated, the reductions established or allocated, or any other matter related to the determination of the fee.
- An appeal would have to be heard by a stormwater utility appeals board appointed by the local unit of government. The appeals board would have to consist of three members, two of whom would have to be licensed professional engineers not employed by the local unit of government.
- An appeal of a fee could not be brought more than one year after the fee was billed.

- To prevail in an appeal of a fee, the appellant would have to demonstrate that the property did not use the system to the extent determined by the local unit of government in the calculation of the fee or that there was a mathematical error in the calculation.
- The sole remedy for a property owner who prevailed in an appeal of a stormwater utility fee would be a prospective correct recalculation of the fee.
- If in an appeal of a fee a local unit found that the appellant did not prevail, that finding would be conclusive until the property was modified to increase or decrease its utilization of the system. The property owner would remain eligible for a reduction in or elimination of fees under the stormwater utility ordinance.
- A property owner making an appeal would have to provide the appeals board with information necessary to make a determination.

A person aggrieved by the decision of the appeals board could appeal the decision to the circuit court in which the property in question was located.

### **Limitations of the Act**

Finally, the new act stipulates that it would not do any of the following:

- Expand the existing authority of local units of government.
- Limit existing authority of local units of government to cooperate with respect to or jointly create and operate stormwater management utilities, subject to duties in creating and managing a stormwater system.
- Require a local unit of government with a separated storm sewer system to adopt a stormwater utility fee or a rate model that includes a stormwater utility fee.
- Require a local unit of government with a combined storm and sanitary sewer system to adopt a stormwater utility fee or a rate model that includes a stormwater utility fee.

The Stormwater Utility Act would take effect 90 days after being enacted.

### **FISCAL IMPACT:**

The bill would have no fiscal impact on state or local government. The language of the bill is permissive. Local units that elected to develop a stormwater management utility would be required meet various notice and meeting requirements prior to the development of the stormwater management utility. Any costs associated with the preliminary requirements would be borne by the local unit of government. If the stormwater management plan was adopted and a stormwater management utility was established, the local unit of government would be authorized to assess a stormwater utility fee sufficient to pay the direct and indirect costs of providing stormwater management.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.